IN THE HIGH COURT OF DELHI

Bail Application No.2267/2007

#	Rajeev Aggarwal	.....	Petitioner
!	through:	Mr.D.C.Mathur, Sr. Advocate with Mr.Ajay Digpaul, Advocate.	
		VERSUS	
$	State (NCT of Delhi)	.....	Respondent
^	through :	Mr. Pawan Sharma, Adv. for State. Mr.R.N.Mittal, Sr.Advocate with Mr.Manoj Taneja for complainant. SI Sukhdev Singh, EOW, Crime Branch	

% DATE OF DECISION: 2.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. FIR No.640/05 dated 16.7.2005 under Section 406/420/120 IPC P.S. Okhla Industrial Area has been registered on the basis of a complaint made by Pradeep Kumar Garg who informed the police that he and his partners have been cheated by M/s Don-Capco Afro Asia Limited, a Nigeria based company of which the petitioner and one Manish

Gupta were Directors. It was informed to the police that M/s PGR Overseas, a partnership firm of which the complainant was a partner was in the business of import and export. In course of business he met the petitioner in the first week of March,2004 who introduced himself as a Director of M/s M/s Don-Capco Afro Asia Limited. Negotiations were held for import of aluminium ingots from Nigeria. After discussions with the petitioner the deal was finalised. First consignment of aluminium ingots weighing 49 tons were received. Further order for import of 300 tons of aluminium ingots was placed. That M/s Don-Capco Afro Asia Limited informed the partnership firm that under 12 invoices requisite goods were shipped from Nigeria. Save and except 2 invoices, it was informed that goods pertaining to 10 invoices were handed over to the shipper M/s CMA CGM. It was informed that the consignment pertaining to 2 invoices was handed over to another shipper M/s Specific International Lines (PTE) Ltd. That based on the bill of lading and other documents of export, payment in sum of Rs.1.25 crores was released. That when containers reached ICD Tuglakabad and the complainant went to take delivery and on delivery of some containers being taken it was revealed that the containers were virtually empty.

2. Investigation revealed that the containers were sealed by M/s Don-Capco Afro Asia Limited in Nigeria before being handed over to the shipper. That the seals were intact when the goods reached India and also till some of the containers were handed over to the importer. The shipping documents, inter alia, record a disclaimer of the shipper relating to packaging and sealing. The clause reads as under :-

> "23. SHIPPER-PACKED CONTAINERS
>
> (1) X X X X X
>
> (2) The shipper is responsible for the packing and sealing of all shipper-packed containers and, if a shipper container is delivered by the carrier with its original seal as affixed by the Shipper intact, the carrier shall not be liable for any shortage of Goods ascertained at delivery."

3. The bill of ladings which were seized by the police, inter alia, records as under :-

> SHIPPER'S STOW, LOAD AND COUNT
> SHIPPED ONBOARD

4. Further, as authorised signatory of M/s Don-Capco Afro Asia Limited, petitioner signed certificates of origin certifying that the material supplied through 12 bills of lading was of Nigerian origin.

5. The company M/s Don-Capco Afro Asia Limited is incorporated in Nigeria. Petitioner is its Managing Director.

One Manish Gupta is its Director and a Nigerian national Akinlolu Sesan Akintunde is its Chairman. 50% of the share holding is held by the petitioner and 25% each by Manish Gupta and Akinlolu Sesan Akintunde.

6. Manish Gupta has paid Rs.25 lacs to the complainant, approximating his 25% share in the company M/s Don-Capco Afro Asia Limited. On said account he had been admitted to bail.

7. Petitioner is in judicial custody since 8.7.2007 and prays that he be released on bail.

8. It was urged by learned counsel for the petitioner that the offence, if any, has been committed in Nigeria and since no sanction has been obtained from the Central Government, same cannot be investigated by virtue of bar under Section 188 Cr.P.C. It was urged that no offence of cheating has been made out. It was urged that there is no material to show that the petitioner was involved in the offence. Counsel urged that clearance was obtained from the authorities at Nigeria. The goods passed out from the office of the exporter at Nigeria to the shipping company. Who knows, where and by whom the goods were removed. In any case, counsel urged that there was no positive material to indict

petitioner with the offence in question. Lastly, it was urged that the investigation is complete. Charge-sheet has been filed. Trial is not likely to be completed in the near future. That keeping in view the nature of offence, to prepare the defence petitioner should be set free.

9. With respect to the submission that the offence of cheating took place in Nigeria, suffice would it be to note that the complainant parted with money when banker of the complainant remitted money to the banker of the exporter. The remission was in India.

10. Section 182(1) of Cr.P.C. reads as under :-

> "182. Offences committed by letters, etc.- (1) Any offence which includes cheating may,if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any court within local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person."

11. Thus, where property was delivered by the person deceived would be the one of the many placed under the local jurisdiction of which the offence could be tried.

12. In this case, money was remitted by the

complainant in India when documents evidencing export from Nigeria were received by the complainant. Thus, prima facie, the courts in India would have jurisdiction to try the complaint.

13. On the issue that no offence being made out, suffice would it be to note that payment of approximately Rs.1.25 crores was made on an inducement that requisite goods have been discharged from a shipper from Nigeria. The containers were found empty/nearly empty. It cannot be said that the offence of cheating is not prima facie made out.

14. No doubt, a charge-sheet has been filed and the petitioner would be in no position to influence the conduct of investigation but noting the amount embezzled, in my opinion, petitioner would not be entitled to be released at this stage in view of the decision of the Supreme Court reported as JT 2000 (1) SC 541 *Mahesh Kumar Bhawsinghka Vs. State of Delhi*.

15. Regarding involvement of the petitioner suffice would it be to note that petitioner would be 50% beneficiary of the ill-gotten wealth.

16. The petition is dismissed.

November 02, 2007 **PRADEEP NANDRAJOG, J.**
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